

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN STARKSON and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

*Docket No. 99-1317; Submitted on the Record;
Issued November 1, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective March 27, 1999.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Appellant filed a series of claims, which were accepted by the Office for back injury. On January 24 1983 he sustained contusion and sprain of the dorsal and lumbar spine; on June 8, 1983 he sustained a low back strain; on March 21, 1986 he sustained a low back strain; on September 29, 1987 he sustained a low back strain; on February 26, 1988 he sustained low back strain; and on October 7, 1988 he sustained a back strain and returned to full duty on January 3, 1989. Appellant alleged on January 27, 1989 that he sustained a low back strain. The Office accepted this claim on March 31, 1989. The Office entered appellant on the periodic rolls on June 19, 1989. By decision dated March 16, 1999, the Office terminated appellant's compensation benefits effective March 27, 1999.¹

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ Furthermore, the right to medical

¹ This case has previously been before the Board on appeal. In a decision dated January 8, 1998, the Board affirmed a June 9, 1995 decision of the Office finding overpayment, fault and requiring recovery. Docket No. 95-2000.

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁵

In this case, appellant submitted a report dated April 5, 1993 from Dr. Kasiel Steinhardt, a Board-certified orthopedic surgeon, who found that appellant could not return to work in the limited-duty position offered by the employing establishment. The Office referred appellant for a second opinion evaluation with Dr. John Joshua, a Board-certified orthopedic surgeon, who, in a report dated December 15, 1993, noted appellant's history of injury and performed a physical examination. He stated that appellant had no present indication of defect and that he could perform the duties of his date-of-injury position.

The medical evidence in the case lapsed in development. The Office referred appellant for a second opinion examination with Dr. Jeffrey Hrutkay, a Board-certified orthopedic surgeon, on April 30, 1998. On June 9, 1998 Dr. Hrutkay noted appellant's history of injury, medical history and performed a physical examination. He found that there were no objective findings of the accepted condition of back strain. Dr. Hrutkay stated that appellant's degenerative condition had progressed as expected, that appellant was currently disabled from performing the duties of a letter carrier and that this disability was due to his underlying degenerative condition.

The Office requested a supplemental report inquiring whether appellant's work injuries or employment duties had contributed to his degenerative disc disease. In a report dated August 5, 1998, Dr. Hrutkay stated that the degenerative condition could not be specifically related to appellant's work as it would have progressed due to daily living.

The Office requested that Dr. Hrutkay address the residuals of appellant's accepted left buttock strain. In a report dated January 12, 1999, Dr. Hrutkay stated that there were no current objective findings of left buttock strain from March 21, 1986. He stated that appellant had no muscle spasm in his buttock or lumbar area and that his current symptoms were due to his degenerative disc disease.

The Board finds that the weight of the medical opinion evidence rests with the reports of Dr. Hrutkay. He provided a history of injury, reviewed appellant's medical history and performed a physical examination. Dr. Hrutkay concluded that appellant had no objective findings related to soft tissue injury and that his current symptoms were due to the degenerative disc disease which was not an accepted condition. Dr. Hrutkay further opined that appellant's degenerative disc disease was not exacerbated or accelerated by his employment.

The Board further notes that there is no current medical evidence supporting appellant's continued disability due to his accepted employment injuries and no medical evidence establishing a causal relationship between appellant's degenerative disc disease and his

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

employment. The Board finds, therefore, that the Office met its burden of proof to terminate appellant's compensation benefits.

The March 16, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 1, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member